

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Cornelius Dozier, IV,
10 Petitioner,
11 v.
12 S. Lake,
13 Respondent.
14

No. 4:15-CV-00477-TUC-JAS

ORDER

15 Pending before the Court is a Report and Recommendation issued by United
16 States Magistrate Judge Leslie A. Bowman that recommends denying the petition on the
17 merits. (Doc. 17). Petitioner filed an objection (Doc. 18), and Respondent filed a Reply
18 to the Objection (Doc. 19).

19 The Court reviews de novo the objected-to portions of the Report and
20 Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for
21 clear error the unobjected-to portions of the Report and Recommendation. *Johnson v.*
22 *Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *see also Conley v. Crabtree*, 14
23 F. Supp. 2d 1203, 1204 (D. Or. 1998).

24 After reviewing Magistrate Judge Bowman's Report and Recommendation, the
25 Court adopts the reasoning and conclusions of that report. In particular, the Court agrees
26 with Judge Bowman's analysis concluding that this case is controlled by *United States v.*
27 *Lemoine*, 546 F.3d 1042 (9th Cir. 2008). In that case, the Ninth Circuit explained that

28 the BOP's operation of the IFRP does not constitute an unlawful delegation

1 of authority to schedule restitution repayments in violation of the MVRA.
2 The MVRA requires the sentencing court to set a restitution repayment
3 schedule. The sentencing court did that here. The MVRA does not prohibit
4 an inmate from voluntarily making larger or more frequent payments than
5 what was set by the sentencing court. Nor does it limit the authority of the
6 BOP, through the IFRP, to offer incentives to inmates to pay their
7 restitution obligations in larger amounts or at a faster rate than the court has
8 required.

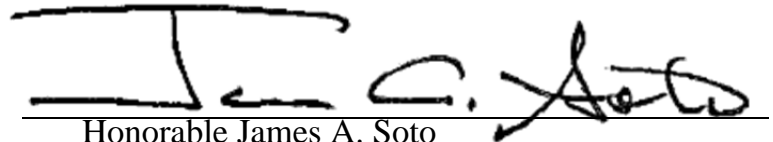
9 *Id.* at 1046. The same reasoning applies here. As Judge Bowman explains in her Report
10 and Recommendation, the trial court set a restitution amount of \$35,317.43 to be paid “at
11 the rate of not less than \$25 per quarter and payment shall be made through the Bureau of
12 Prisons’ Inmate Financial Responsibility Program.” (Doc. 13-3, p.3). After an incident of
13 non-payment, the Bureau of Prisons reassessed Petitioner’s financial situation and
14 determined that he could increase his payments to \$30 per month. Petitioner agreed to
15 the new payment schedule. Nothing in the Court’s restitution order prevents the Bureau
16 of Prisons and Petitioner from agreeing to a payment plan at a higher rate than that set by
17 the trial court.

18 Based on these reasons, IT IS ORDERED THAT

19 (1) The Petition for Writ of Habeas Corpus (Doc. 1) is DENIED.

20 (2) The Clerk is ordered to close the file in this case.

21 Dated this 21st day of September, 2016.

22 
23 Honorable James A. Soto
24 United States District Judge